

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA**

EDGAR WILLIAMS,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

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Case No. CIV-22-279-RAW-DES

ORDER

Before the court is the Report and Recommendation of the United States Magistrate Judge. It recommended the granting of defendant's motion to dismiss plaintiff's complaint for lack of subject-matter jurisdiction. The complaint alleges a claim under the Federal Tort Claims Act ("FTCA") for alleged medical malpractice at the Muscogee (Creek) Nation Medical Center in Okmulgee, Oklahoma.

The Report and Recommendation describes how the record establishes that the doctor who allegedly committed malpractice was an independent contractor rather than an employee of the United States of America, and thus (under governing authority) this court lacks jurisdiction.

Plaintiff's objection (#24) is brief and generally focuses on the inherent difficulty of a plaintiff in determining the employment status of the personnel at a federal government hospital. Defendant's response (#26) asserts objection has been waived.

A party's objection to the Magistrate Judge's Report and Recommendation must be both timely and specific to preserve appellate review. *See United States v. 2121 E. 30th St.*,

73 F.3d 1057, 1060 (10th Cir.1996). Only an objection that is sufficiently specific to focus the district court's attention on the factual and legal issues that are truly in dispute will suffice. *Id.*

Within his objection, plaintiff seeks to incorporate his original response to defendant's motion to dismiss. At least one district court, however, has ruled this is insufficient. *See Bishop v. Roof*, 2013 WL 1748422 (W.D.Okla.2013). Nevertheless, this court has elected to review the plaintiff's original response, as well as the rest of the record, and still concludes (assuming *arguendo* that the usual *de novo* review were applicable) the plaintiff's response to the Report and Recommendation should be overruled.

It is the order of the court that the Report and Recommendation (#22) is hereby affirmed and adopted as the order of the court. Defendant's motion to dismiss (#10) is hereby granted..

This action is dismissed without prejudice for lack of subject-matter jurisdiction.

ORDERED THIS 27th DAY OF FEBRUARY, 2024.



RONALD A. WHITE
UNITED STATES DISTRICT JUDGE